

the issue of privilege in British North American legislative assemblies. They settled it by express and deliberate statutory grant in Section 18 of the new Constitution, the British North America Act, 1867. By grant, the Dominion Parliament was conferred with the full powers and privileges of the *lex et consuetudo parlamenti* of the United Kingdom.

In 1875, the Imperial Government passed the Parliament of Canada Act amending Section 18 to read as it currently does. This amending act of 1875 was enacted precisely to clarify the powers and privileges of the Dominion Parliament. The amending act was entitled:

An Act to remove certain doubts with respect to the powers of the Parliament of Canada, under Section 18 of the British North America Act, 1867.

It further stated:

And whereas doubts have arisen with regard to the power of defining by an Act of the Parliament of Canada, in pursuance of the said section, the said privileges, powers or immunities; and it is expedient to remove such doubts...

Consequently, Section 18 of the British North America Act, 1867, as amended in 1875, now reads:

The privileges, immunities and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

Section 18 of the British North America Act conferred on the Senate of Canada the same privileges, immunities, and powers as held by the House of Commons in the United Kingdom.

It was not until 1896 that the privileges, powers and immunities of the provincial legislatures were finally settled in the case of *Fielding v. Thomas*. Today, we find these privileges confirmed in Sections 4 and 5 of the Parliament of Canada Act, R.S.C. 1985, which is the descendant of the Senate and House of Commons Act. Section 4 of that act reads:

The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise

(a) such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and

(b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those,

at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

Section 5 of the Parliament of Canada Act commands all judicial officers, lawyers, judges of Canada to take judicial notice of these privileges, stating:

The privileges, immunities and powers held, enjoyed and exercised in accordance with section 4 are part of the general and public law of Canada and it is not necessary to plead them but they shall, in all courts in Canada, and by and before all judges, be taken notice of judicially.

I should first like to enumerate some of these privileges. First, and oldest, among these privileges is the claim of Parliament to the attendance and service of its members. Other related privileges include:

—the freedom of speech in debates and proceedings in Parliament, as granted in the Bill of Rights. This privilege extends to witnesses before parliamentary committees.

—the control over publication of proceedings of Parliament.

—the freedom from civil arrest and molestation by civil process.

—the exemption from jury service, and exemption from attendance as a witness.

—the duty of members to maintain freedom of speech.

—the privilege and power to institute inquiries and to require the attendance of witnesses and the production of documents. This privilege is known as the “inquisitorial powers” of Parliament.

—the privilege to exclude strangers from debates, from proceedings, and from voting in the Houses of Parliament.

—the privilege and power of Parliament of discipline over its members, including the power of expulsion.

—and the privilege and power to administer oaths to witnesses.

Another of Parliament’s fundamental privileges is the regulation of its own internal affairs, precincts and administration, free from outside interference, including from any court.

The Senate, as we know, controls its own security, its own administration, its own precincts, its own staffing, and its own financial management. Parliament enjoys the privilege of controlling the admission of persons to the precincts, even including the management of tourists. Parliament’s inherent authority prohibits many activities in the precincts, including the bearing of firearms and the service of legal process in the precincts.